STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 18, 2003
v	No. 235570 St. Joseph Circuit Court
CATHERINE ELIZABETH MORAN, Defendant-Appellant.	LC No. 00-010332-FH

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendant appeals as of right her conviction of delivery of less than fifty grams of a controlled substance, MCL 333.7401(2)(a)(iv), and the sentence of one to twenty years in prison. We affirm.

Defendant first argues that the trial court erred in refusing to provide a requested instruction to the jury on the defense of duress. She maintains that there was ample evidence to support the instruction because she presented evidence that she was afraid of the individual to whom she sold the controlled substances. The trial court held that this instruction did not apply to the facts of the case in that there was no evidence that, at the time of the sale, defendant was experiencing fear or that she sold the informant the substances to avoid threatened harm. We find no error in the trial court's decision.

A trial court is required to instruct the jury concerning the law applicable to the case and to fully and fairly present the case to the jury in an understandable manner. MCL 768.29; *People v Mills*, 450 Mich 61, 80; 537 NW2d 909, modified 450 Mich 1212; 539 NW2d 504 (1995). Jury instructions must include all of the elements of the charged offense and must not exclude material issues, defenses, and theories if there is evidence to support them. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). However, before a defendant is entitled to a duress instruction, defendant must put forth a "prima facie" case of duress involving all of the elements of that defense. *People v Lemons*, 454 Mich 234, 247-248; 562 NW2d 447 (1997).

> [A] defendant successfully carries the burden of production where the defendant introduces some evidence from which the jury could conclude the following:

A) The threatening conduct was sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm;

B) The conduct in fact caused such fear of death or serious bodily harm in the mind of the defendant;

C) The fear or duress was operating upon the mind of the defendant at the time of the alleged act; and

D) The defendant committed the act to avoid the threatened harm. [*Id*., 246-247 (citation and footnote omitted).]

In addition, the threatening conduct or act of compulsion must be "present, imminent, and impending" and that "a threat of future injury is not enough" and the threat must have arisen without fault on the part of the individual seeking to use the defense. *Id*., 247.

In the instant case, defendant failed to show evidence of a direct threat, alleging at most that she was "frightened" by the informant when he arrived at her home one evening prior to the sale. She also failed to provide any evidence that her actions in selling controlled substances to him was the result of a present or imminent threat. Thus, the evidence failed to satisfy the burden of production of a prima facie claim that fear was operating on defendant's mind at the time of the alleged acts or that she reasonably felt she would suffer some harmful repercussions for failing to provide the morphine and valium to the informant. The trial court did not err in refusing to provide the requested instructions.

Defendant next argues that the trial court erred in refusing to grant her motion for a mistrial because a number of witnesses made admittedly inadvertent references to her prior dealings with the informant. We disagree. After a thorough review of defendant's claim of error, we hold that, given the strong evidence against defendant, the inadvertent references did not merit reversal or a mistrial because they were not deliberately repeated with the intent to inform the jury that the defendant had committed other acts. See *People v Knapp*, 244 Mich App 361, 378; 624 NW2d 227 (2001); *People v Wallen*, 47 Mich App 612, 613; 209 NW2d 608 (1973).

Finally, defendant argues that the trial court erred in sentencing her to a term of imprisonment rather than lifetime probation pursuant to MCL 769.34(4)(b). However, we note that defendant is no longer incarcerated. According to the Michigan offender tracking information system, defendant was released from prison on June 26, 2002, with a supervision discharge date of June 26, 2004. Thus, we need not decide this moot issue. See *In re Stricklin*, 148 Mich App 659, 666-667; 384 NW2d 833 (1986).

Affirmed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray